

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **DISTRICT OF NEVADA**

3       ALICE HATANO,  
4

5               *Petitioner,*

6       vs.

7       RAND BEERS, *et al.*

8               *Respondents.*  
9

2:13-cv-01982-GMN-VCF

ORDER

10           This represented immigration habeas matter under 28 U.S.C. § 2241 comes before the  
11   Court for initial review under 28 U.S.C. § 2243. The Court will require that petitioner amend  
12   her petition to name her immediate custodian as an additional respondent.

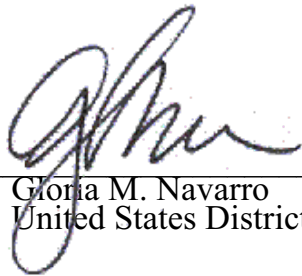
13           Petitioner Alice Hatano seeks release from physical custody. She alleges that she is  
14   being held at the Henderson Detention Center pending her removal from the United States by  
15   federal immigration authorities. She alleges that she is subject to unconstitutional indefinite  
16   detention following upon travel documents not having been issued by Kenyan authorities  
17   allegedly over an eight month period. The petition names as respondents only remote  
18   supervisory officials, *i.e.*, the federal attorney general, a department secretary, a local officer in  
19   charge, and a field office director. The petition does not name petitioner's immediate physical  
20   custodian, *i.e.*, the warden or jailer at the detention facility, as a respondent.

21           Under *Rumsfield v. Padilla*, 542 U.S. 426 (2004), the proper respondent for a core  
22   challenge seeking release from physical custody is the warden of the facility where the prisoner  
23   is being held, not the attorney general or some other remote supervisory official. 542 U.S. at  
24   435. *Padilla* left open the precise question of whether this immediate custodian rule applies to  
25   a habeas petition challenging an alien's custody pending removal. 542 U.S. at 435 n.8; *see also*  
26   *Armentero v. Immigration and Naturalization Service*, 412 F.3d 1088, 1089-1102 (9<sup>th</sup> Cir.  
27   2005)(*Armentero II*)(Berzon, J., dissenting)(discussing *Padilla*); *Singh v. Holder*, 2012 WL  
28   5878677 (S.D.N.Y. 2012)(discussing later jurisprudence). The more prudent course, until the

question is definitively resolved by the Supreme Court or Ninth Circuit, would be to require that the immediate custodian also be named as a respondent, to remove this avoidable issue from any further question in the case, both for this Court and reviewing courts. Where the proper respondent is not named, the district court, rather than ordering an immediate dismissal, must afford the petitioner an opportunity to amend her petition to name the proper respondent. *Armentero v. Immigration and Naturalization Service*, 340 F.3d 1058, 1074 (9<sup>th</sup> Cir. 2003)(*Armentero I*), withdrawn on grant of en banc rehearing, 382 F.3d 1153 (9<sup>th</sup> Cir. 2004).<sup>1</sup>

**IT THEREFORE IS ORDERED** that petitioner shall have **twenty-one (21) days** from entry of this order within which to file an amended petition naming her immediate custodian as an additional respondent. Any amended petition filed will supercede and replace the original petition, as a stand-alone pleading, such that any claims, parties or allegations omitted from the amended petition no longer will be before the Court.

**DATED** this 7th day of November, 2013.



Gloria M. Navarro  
United States District Judge

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<sup>1</sup>The Court expresses no opinion as to whether all remaining remote supervisory officials named also are necessary respondents. Upon the naming of the physical custodian as an additional respondent, and assuming no additional changes in the amended petition requiring further screening, the Court will issue an order for a response served upon the officers necessary for the Court's jurisdiction and proper service, *i.e.*, the Attorney General, the Secretary, the local United States Attorney, and the named physical custodian. The Court normally does not direct service upon, *e.g.*, a field director or other local immigration officer absent a demonstration that same is necessary to sustain the Court's jurisdiction. To date, the local United States Attorney has appeared and filed an initial response to such an order promptly within the time allowed.